

Nicholas M. M. Drum, OSB #063167
Dayna J. Christian, OSB #973360
Immix Law Group PC
600 NW Naito Parkway, Suite G
Portland, Oregon 97209
Phone: (503) 802-5533
E-Mail: nick.drum@immixlaw.com
E-Mail: dayna.christian@immixlaw.com

Attorneys for Plaintiff Billups, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BILLUPS, INC., an Oregon corporation,

Plaintiff,

v.

AMBASSADOR TECHNOLOGIES, INC.
dba BYPROXIE, a foreign corporation;
HOMETOWN HEART, a foreign
corporation; EAZE TECHNOLOGIES INC.,
a foreign corporation; and HERBAN
INDUSTRIES CA LLC, a foreign limited
liability company,

Defendants.

Case No.: 3:20-CV-00891-BR

**PLAINTIFF BILLUPS, INC.'S MOTION
FOR ENTRY OF DEFAULT AGAINST
DEFENDANT HERBAN INDUSTRIES
CA LLC**

I. CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule ("LR") 7-1, counsel for Plaintiff Billups, Inc. ("Plaintiff" or "Billups") certifies that they have been unable to confer with Defendant Herban Industries CA LLC ("Herban") regarding Plaintiff Billups, Inc.'s Motion for Entry of Default Against Defendant Herban Industries CA LLC ("Motion"), as discussed further below.

No appearance has been filed nor has any notice of an intent to appear been submitted by Herban or counsel for Herban. Therefore, compliance with LR 55-1 is not required.

II. MOTION FOR ENTRY OF DEFAULT

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 55(a), Plaintiff hereby moves this Court for an entry of default against Defendant Herban. As fully detailed below, Herban has failed to appear before this Court and/or participate in this litigation as required by the applicable rules. As such, it is appropriate and necessary for this Court to order the entry of default against it.

This Motion is supported by the statement of background facts and memorandum of law set forth below, as well as the Declaration of Dayna J. Christian that is being filed concurrently with this Motion.

III. BACKGROUND FACTS

Billups filed this action against all defendants for breach of contract and unjust enrichment on June 3, 2020. *Complaint* (Docket No. 1). On September 18, 2020, Billups filed its First Amended Complaint. *First Amended Complaint* (Docket No. 19). Billups has successfully served all defendants, including Herban (the registered agent for which was served on October 30, 2020). *See Proof of Service–Herban Industries CA LLC* (Docket No. 27) (“*Proof of Service*”).

Pursuant to FRCP 12(a)(1)(A)(i), Herban was required to answer the First Amended Complaint by no later than November 20, 2020. *See* FRCP 12(a)(1)(A)(i) (requiring a defendant to answer within twenty-one days of being served with a summons and complaint). To date, no answer has been filed by Herban or its counsel. Further, to date no intent to appear in the matter has been submitted to the Court or Billups’ counsel by or on behalf of Herban. *Declaration of Dayna J. Christian in Support of Plaintiff Billups, Inc.’s Motion for Entry of Default Against Defendant Herban Industries CA LLC* (“*Christian Decl.*”), ¶ 3.

Having been adequately served and having failed to answer within the required time, this Motion is appropriate, and an entry of default against Herban is required.

IV. MEMORANDUM OF LAW

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk *must* enter the party’s default.” FRCP 55(a) (emphasis added).

Billups’ counsel retained the services of Accurate Document Imaging (“ADI”), an entity in California that specializes in process service of legal documents in the Redding, California area. *See Proof of Service*, 2; *Christian Decl.*, ¶ 4. ADI, by and through its process server Duane Shoemaker, received and served upon Herban the Summons issued by the Clerk of this Court and a true and accurate copy of the First Amended Complaint on October 30, 2020. *See Proof of Service*, 2; *see also Summons in a Civil Action—Herban Industries CA LLC* (Docket No. 24); *Christian Decl.*, ¶ 5. Personal service upon Herban was accomplished by ADI’s service of the Summons and First Amended Complaint upon Herban’s registered agent, Northwest Registered Agent Inc. in Redding, California. *Proof of Service*, 2.

To date, no answer has been filed by Herban, nor has any other notice of an intent to appear been submitted by or on behalf of Herban. *Christian Decl.*, ¶ 3. The time provided for such an appearance has expired. *See* FRCP 12(a)(1)(A)(i). Accordingly, Plaintiff is entitled to the entry of an order of default by the Clerk of this Court.

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V. CONCLUSION

For the reasons set forth above, Plaintiff is entitled to the entry of an order of default against Herban pursuant to FRCP 55(a). Plaintiff respectfully requests that this Court grant its Motion and that the Clerk of this Court promptly enter the requested order of default.

DATED December 4, 2020

IMMIX LAW GROUP PC



Nicholas M. M. Drum, OSB #063167

Dayna J. Christian, OSB #973360

Immix Law Group PC

600 NW Naito Parkway, Suite G

Portland, Oregon 97209

Phone: (503) 802-5533

Fax: (503) 802-5351

E-Mail: nick.drum@immixlaw.com

E-Mail: dayna.christian@immixlaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020 I served a true copy of the foregoing
**PLAINTIFF BILLUPS, INC.'S MOTION FOR ENTRY OF DEFAULT AGAINST
DEFENDANT HERBAN INDUSTRIES CA LLC** on the individuals listed below, by way
of the method indicated:

Steven C. Berman
Lydia Anderson-Dana
Stoll Stoll Berne Lokting & Shlachter P.C.
209 SW Oak Street, Suite 500
Portland, OR 97204
(503) 277-1600
sberman@stollberne.com
landersondana@stollberne.com

Via E-Mail

Paul Llewellyn (admitted *pro hac vice*)
Evangeline A.Z. Burbidge (admitted *pro hac vice*)
Amy Kashiwabara (admitted *pro hac vice*)
Lewis & Llewellyn, LLP
601 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 800-0592
PLlewellyn@lewisllewellyn.com
eburbidge@lewisllewellyn.com
akashiwabara@lewisllewellyn.com

Via E-Mail

*Attorneys for Defendants Hometown Heart
and Eaze Technologies, Inc.*

IMMIX LAW GROUP PC



Nicholas M. M. Drum, OSB No. 063167
Dayna J. Christian, OSB No. 973360
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Fax: (503) 802-5351
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E-Mail: nick.drum@immixlaw.com

Attorneys for Plaintiff